IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.729/1996
(Rajasthan Agricultural University, Bikaner & Anr.
Vs.
The State of Rajasthan & Ors.)

S.B.CIVIL WRIT PETITION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.

***

DATE OF JUDGMENT: AUGUST 30 , 2007

P R E S E N T

HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.M.S.Singhvi, for the petitioners
Mr.O.P.Rathi, Dy.G.A.

BY THE COURT

The petitioners have challenged the award dated 22.4.1995 passed by the Labour Court, Bikaner, by which retrenchment of services of workman respondent No.3 was found to be invalid. The workman was directed to be reinstated in service and from the date of reinstatement to receive the full payment which he was getting at the time of termination of his services.

At the time, when retrenchment took place the workman was getting Rs.22/- per day. The workman was employed in Rajasthan Krishi Vishvidhyalay Pashudhan Anusandhan Kendra, Nohar and was engaged in the job Gardener. Initially as daily wager he was given Rs.14/- per day and later on his daily wage was increased to Rs.22/- per day. He has worked for more than 240 days in the service of the petitioners. But without assigning any reason or complying with the provisions of the Industrial Disputes Act, he has been retrenched from service. A reference was made by the government to the Labour Court to adjudicate upon the validity of the termination of services of the workman. The termination of the services of the workman was found to be invalid and illegal by the Labour Court because the petitioners have not followed or complied with the statutory provisions as provided under Section 25-F of the Industrial Disputes Act. Hence the retrenchment of the workman was held to be invalid.

The petitioners admitted that the workman was appointed in September, 1986 on daily wages basis and it was the workman, who left the job suo moto and did not turn up on job. The petitioners issued letters dated 21.10.1987 and 28.10.1987 to the workman to join the work assigned to him, but he did not pay any heed and also did not join the duty. It

was only the fault of the workman not to join the job assigned to him. The Labour Court after recording evidence of both the parties passed the impugned award under challenge.

The arguments were heard. None appeared on behalf of the workman.

The learned counsel for the petitioners pleaded that the workman had left the job suo moto, therefore, he is not entitled to any relief of reinstatement as there is neither question of infringement of Section 25-F nor the question of reinstatement can also be raised. The Labour Court has inherently went against the factual as well as legal aspect of the matter. The learned counsel also submitted that the workman has only worked for a short period of one year 5 months and instead of reinstatement, compensation may be allowed. The learned counsel also cited (1) 2006(6) SCC 221 – RBI vs. Gopinath Sharma, (2) 2006(9) SCC 434 – Haryana State Electronics vs. Mamni, (3) 2006(4) SCC 1 – Secretary State of Karnataka vs. Uma Devi and (4) 2006(6) SCC 516 – Municipal Council, Samrala vs. Sukhwinder Kaur in support of his arguments.

From the evidence recorded, it is borne out clearly

that the workman had worked for more than 240 days on daily wage basis. Whatever evidence adduced by the petitioners before the Labour Court does not go to show that after termination or retrenchment of the services of the workman, he was ever asked by the petitioners to join on duty. The alleged letters dated 21.10.87 and 28.10.87 were never dispatched to the workman and his services were termination without any reason, more-so without following the procedure provided under Section 25-F of the Industrial Disputes Act, as neither one month's notice in writing was given nor the workman was paid anything as compensation as provided under the Section itself.

The Labour Court or this Court is not giving any relief of regularisation, appointment, absorption or making him permanent on the post on which the workman was working. Here is the only question of the statutory provisions that have not been complied with at the time of termination of his services and whatever remedy provided under the statute, the workman is entitled as a matter of right.

The case Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.(supra) deals with the persons, who are temporary, contractual, casual,daily wage or ad hoc employees, who wanted to have permanent, regular or reinstatement

because of their long length of service rendered in the department. The instant case is distinguishable as it deals the matter under a particular statute, which provides that a workman if terminated or retrenched has to receive a notice of one month or compensation in lieu thereof, which as per statement and evidence adduced is clearly borne out that this provision of the statute has not been complied with.

The impugned award, which was passed after giving the opportunity of leading evidence to both the parties and it is admitted that the workman has worked for more than 240 days in a year and if so, then compliance of mandatory provision under Section 25-F was not followed or complied with by the petitioners. The question of applicability of Section 2(bb) does not arise as there was no question of contract in between the parties and he was simply employed on daily wages and was working as Gardener.

The learned counsel pleaded that there was no sanctioned post of Gardener, but since the work was being taken by the petitioners from the workman as that of Gardner and it is not a case of the petitioner that same type of work, was not being taken from another person. In such circumstances the impugned award passed by the Labour Court does not have any

illegality, infirmity or irregularity.

The learned counsel pleaded that since time gap from the date of termination till today is more than 20 years, he has rendered only 1 year & 5 months service, so instead of reinstatement, it would be appropriate if a compensation be awarded to the workman and has cited S.B.Civil Writ Petition No.1790/1995 – The Ganganagar Central Cooperative Bank Ltd. vs. Judge Labour Court, Bikaner & Anr. in which compensation of Rs.25,000/- instead of reinstatement was awarded.

It is true that compensation in place of reinstatement can be awarded in suitable cases, but in the instant case the petitioner admitted that the workman when left the job suo moto, they wrote two letters dated 21.10.1987 and 28.10.1987 to the workman to join the assigned work. This admission of the petitioner clearly reveals that they are in need of the services of the workman; though the letters written by the petitioner never reached in the hands of the respondent workman. Looking to the need of the petitioner, it will be more reasonable and appropriate that the workman be awarded reinstatement instead of compensation. It has not been alleged by the petitioner that the work being performed by the workman was not being taken by some other person in place of workman respondent. The

termination or retrenchment should not depend upon the whims of a particular person. The workman was terminated without any reason or basis and as per his statement, he is still sitting idle and not doing any job. Compensation is simply a monitory relief and not a regular job. Looking to the admission of the petitioner, for asking to join the duty, it would be in the interest of justice to give relief to the workman of reinstatement. In such circumstances, the court is of the opinion that the compensation could not serve the fruitful purpose of the workman.

Resultantly, there is nothing in the impugned order or award of the learned Labour Court dated 22.4.1995, which requires interference by this Court. There is no force in the writ petition, which deserves to be dismissed.

The writ petition stands dismissed. No order as to costs.

(BHANWAROO KHAN)J.

BKS/-